

Connery Associates

June 25, 2004

To: Chatham Planning Board

Fr: Connery Associates

Re: Revised Non-Conforming Lot, Use and Structure Regulations, including comments as of June 15th

1.0 Overview

We have added sections and words as discussed at the June 15th meeting. Further, the current draft deletes, until we can get clarification from Town Legal Counsel, the initial purpose statement of the current Section V i.e. ***“to reduce or minimize existing adverse impacts on neighboring properties or on natural resources”***. At best it seems redundant with another purpose statement of the current bylaw i.e. ***“to promote or maintain compatibility with neighboring properties and natural resources.”*** At worst, the “reduction” requirement may inadvertently set a standard that cannot ever be realistically achieved by most if not all pre-existing non-conforming uses. By having a criterion to “reduce impacts” may conflict with the non-conforming standard provided by Chapter 40A Section 6, said standard being “substantially not more detrimental”.

As noted during the two previous review sessions the draft proposal is not “formatted” at this point since we will be reformatting the entire bylaw at the conclusion of our efforts.

Section xxxxx Non-Conforming Lots, Buildings and Uses

1.0 Purpose: The provisions of this section are intended to achieve the following objectives consistent with non-conforming lots, buildings and uses as provided under Chapter 40A Section 6 Massachusetts General Laws

- To promote or maintain compatibility with neighboring properties and natural resources.
- To avoid the creation of adverse impacts on neighboring properties or on natural resources.

2.0 Applicability. The Chatham Protective Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G. L. c. 40A, s.5 at which this zoning bylaw, or any relevant part thereof, was adopted. Such prior, lawfully existing non-conforming uses and structures may continue, provided

that no modification of the use or structure is accomplished, unless authorized hereunder.

2.1 Exemptions

2.1.1 Non Conforming Single and Two Family Residential Structures.

Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon determination that such proposed reconstruction, extension, alteration, or structural change does not increase the nonconforming nature of said structure or create any new non conformity.

In the event that it is determined that the nonconforming nature of such a structure would be increased or a new non conformity would be created by the proposed reconstruction, extension, alteration, or structural change, the Board of Appeals may by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the surrounding neighborhood.

2.1.2 Non-Conforming Lots. Any increase in area, frontage, width, yard or depth requirements of this bylaw shall not apply to a lot for single or two family residential use which at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with any adjoining land, conformed with the then existing requirements and had less than the proposed requirements but at least 5,000 square feet of area and fifty feet of frontage.

2.1.3 Two or Three Adjoining Lots. Any increase in area frontage, width, yard or depth requirements of this zoning bylaw shall not apply for a period of five years from its effective date to a lot for single family residential use provided the plan for such lot was duly recorded or endorsed and such lot was held in common ownership with any adjoining land and has less than the dimensional and density requirements of the newly effective zoning but contained at least seven thousand five hundred (7,500) square feet and seventy five (75) feet of frontage. This exemption shall not apply to more than three (3) such lots held in common ownership.

2.1.4 Non-Conformity Due to Public Taking. Any non-conformity relative to setback or lot area created by laying out and acceptances of a road or roads in the Town of Chatham as a public way or as ways shall render any structure, use or lot as preexisting non-conforming. Any structure or use that becomes non-conforming as a result of said taking may be extended provided that doing so does not increase the non-conforming nature of such a structure or use. Any lot that is reduced in area such as to render it unbuildable because it no longer meets the minimum lot area for the zoning district in which it is located or because it no longer meets the minimum lot area for the exemptions

provided in this section of the Chatham Zoning Bylaw may be built upon provided that said lot was buildable prior to said road taking.

2.1.5 Subdivision and Approval not Required Plans. Subdivision and Approval Not Required plans which met the requirement set forth in MGL 40A Section 6 are protected from certain zoning changes for a period of eight (8) years in the case of subdivisions and three (3) years in the case of Approval not required plans.

3.0 Nonconforming Uses. The Board of Appeals may grant a special permit to change a non-conforming use in accordance with this section only if it determines that such a change or extension shall not be more substantially detrimental than the existing non-conforming use to the surrounding neighborhood. The following types of changes to non-conforming uses may be considered by the Board of Appeals:

- a. Change or substantial extension of the use.
- b. Change from one nonconforming use to another, less detrimental, nonconforming use.

3.1 The following circumstances shall be deemed as examples of changing from one non-conforming use to another less detrimental non-conforming use.

- Changing from a commercial use of any type to a residential use of two or less dwelling units.
- Changing from a retail use to a personal service use, but not including banks.
- Changing from a retail use to an office use, but not including medical offices.
- Change from one retail use to another retail use that does not require additional off-street parking, or make the existing off-street parking supply more non-conforming.

4.0 Non-Conforming Structures. The Board of Appeals may grant a special permit to reconstruct, extend, alter, or change a non conforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration or change shall not be substantially more detrimental than the existing non-conforming structure to the surrounding neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

- a. Reconstructed , extended or structurally changed;
- b. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent

4.1 Minor Alteration: In the instance where an extension of a non-conforming structure is 50 square feet or less, and where said extension will not increase an existing non-conformity, or create a new non-conformity, and where the extension supports the existing use, the Zoning Enforcement Officer may recommend to the Building inspector that a building permit be granted, without issuance of a special permit from the Board of Appeals, if the Zoning Enforcement Officer determines that the proposed alteration has minimal impact, if any, on the surrounding neighborhood. The granting of a building permit for a minor alteration consistent with the criteria noted above shall not be permitted to occur more than once every ten years regardless of a change in ownership.

5.0 Board of Appeals Decision Criteria. In exercising their decision making authority in the granting of a special permit, the Board of Appeals shall make written findings that the proposed extension, alteration, or change of use will not be substantially more detrimental to the neighborhood than the existing non-conforming structure or use.

In making its findings the Board of Appeals shall address each of the following considerations as applicable.

- Adequacy of the size of the site including, but not limited to, maximum lot or building coverage and setbacks;
- Compatibility of the size of the proposed structure with neighboring properties;
- Extent of proposed increase in non-conforming nature of the structure or use
- Suitability of the site, including but not limited to, impact on neighboring properties or on the natural environment, including slopes, vegetation, wetlands, groundwater, water bodies and storm water run-off;
- Impact of scale, sighting and mass on neighborhood visual character, including views, vistas and streetscapes;
- Compatibility of proposed uses with neighboring uses;
- Adequacy of method of sewage disposal, source of water or drainage;
- Impact on traffic flow and safety;
- Noise and litter;
- Adequacy of utilities and other public services.

6.0 Variance Required. Except as provided in subsection 2.1.1 (exemptions for single and two family dwellings) the reconstruction, extension, or structural change of a non-conforming structure in such a manner as to increase an existing non-conformity, or create a new non-conformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals consistent with MGL Chapter 40A Section 10.

7.0 Abandonment or Non-Use. A non-conforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning bylaw.

8.0 Reconstruction after Catastrophe. A non-conforming structure may be reconstructed for the same use after a catastrophe in accordance with the following provisions:

- a. Reconstruction of said premises shall commence within two years after such catastrophe.
- b. Reconstructed structures shall be located on the same footprint as the original non-conforming structure, and shall be only as great in volume or area as the original nonconforming structure.
- c. Structures destroyed by catastrophe may also be rebuilt in a different location on the lot so long as the new location meets all applicable dimensions required by the present bylaw for the zoning district in which the structure is located.

9.0 Reversion to Nonconformity. No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.